

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
INLAND BANK AND TRUST,

Plaintiff,

-against-

16-cv-9964 (LAK)

ARG INTERNATIONAL AG,

Defendant.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge*.

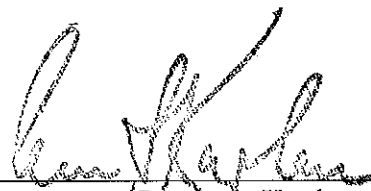
This matter is before the Court on cross-motions for summary judgment. In a report and recommendation dated May 3, 2018 [DI 63] (the "R&R"), Magistrate Judge Sarah Netburn recommended that both motions be denied, as she concluded that there are genuine issues of material fact with respect to whether the plaintiff authorized sales of inventory by Metallic Conversion Corporation free of plaintiff's perfected security interests through a course of performance, course of dealing or usage of trade. Plaintiff objects to the R&R's recommendation that its motion be denied, arguing that there is no genuine issue of material fact with respect to its alleged authorization.

The Court has reviewed the record and considered plaintiff's objection. While the question is a close one and plaintiff may well have the advantage at trial, the Court agrees that there is a genuine issue of material fact on this issue.

Accordingly, the cross-motions [DI 45, DI 51] are denied.

SO ORDERED.

Dated: July 23, 2018



Lewis A. Kaplan
United States District Judge

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